

(CLAS)

1 of 2

FILED: September 12, 2000
APPLICANT(S): John Barthelows Classen

DOCKET NO.: Classen = 1D
[PARENT CASE: 08/594,651]

THE PATENT AND TRADEMARK OFFICE STAMP HEREON
ACKNOWLEDGES RECEIPT OF THE ABOVE-IDENTIFIED
APPLICATION, INCLUDING THE FOLLOWING PAPERS:

☒ FEES \$ 1,753.00 (CH. # PTO-2038)

☒ NEW APPLICATION TRANSMITTAL LETTER

☐ ORIGINAL NON-PROVISIONAL UTILITY

☐ CONTINUATION-IN-PART (37 CFR §1.53(b))

☒ CONTINUATION (37 CFR §1.53(b))

☐ DIVISIONAL (37 CFR §1.53(b))

☐ DESIGN

☐ PLANT

☐ PROVISIONAL

☒ SPECIFICATION AND CLAIMS (141 pages) + abstract

☒ DRAWINGS (3 sheets; 1-3 figures)

☐ SEQUENCE LISTING ☐ WITH DISK

☒ DECLARATION (1 pages)

☒ SMALL ENTITY STATEMENT(S) (1 pages)



☐ INFORMATION DISCLOSURE STATEMENT (_____ pages)

☒ FORM 1449 (8 pages)

☐ _____ PATENTS AND/OR PRINTED PUBLICATIONS

☐ PRELIMINARY AMENDMENT

☐ SUPPLEMENTAL PRELIMINARY AMENDMENT

☐ OTHER AMENDMENT

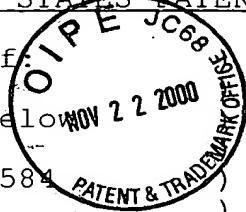
☐ _____ PRIORITY DOCUMENT(S) NO. _____

☒ OTHER 6-892'S

1647#3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
CLASSEN, John Barthelme
Serial No.: 09/660,584
Filed: September 12, 2000
For: METHOD AND COMPOSITION
FOR AN EARLY VACCINE...



Art Unit: 1642
Examiner:
Washington, D.C.
November 22, 2000
Docket No.: CLASSEN=1D

RECEIVED

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TECH CENTER 1600/2000

REQUEST TO VACATE NOTICE TO FILE MISSING PARTS

Honorable Commissioner of Patents
Washington, D.C. 20231

S i r :

On November 9, 2000, the USPTO mailed a notice to file missing parts, asserting that this application was filed without paying all filing fees.

1. It is unclear from the Notice whether the PTO position is that (1) the application has small entity status, and no fees were paid, or (2) small entity status has not been established, and the applicant owes the difference between the large and small entity fees. On the one hand, it says "applicant must submit \$345 to complete the basic filing fee and/or file a small entity statement claiming such status", implying that (2) applies. However, the quoted surcharge (\$65) is for a small entity, suggesting that (1) applies.

Small entity status was asserted in section 2 of the transmittal letter, which stated in pertinent part

A verified statement claiming small entity status was filed February 12, 1996 in prior application no. 08/591,651. Status is still proper and desired.

Not only can we rely on the old statement, under recent rule changes (65 Fed. Reg. 54604, 54660, September 8, 2000, see amended 37 CFR §1.27(c), effective September 8, 2000), a formal small entity statement is no longer required so this mere assertion was enough. Also, assertion may be by payment of the exact amount of a small entity fee, see 37 CFR §1.27(c)(3), and compare page 2 of the transmittal letter.

2. The filing receipt mailed November 9, 2000 acknowledges

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that small entity status has been established. Hence, we assume that the issue is whether any fees were paid.

At the top of page 2 of the transmittal letter, it is stated "Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$1,753.00 is attached [sic]". Enclosed herewith are copies of that Credit Card Payment Form, and of the postcard receipt acknowledging same.

It is clear that all fees were paid, this payment actually exceeding (for reasons set forth below) the amount now required as a filing fee. (And see also the deposit account charge authorization in Section 8 of the transmittal letter.)

3. The credit card payment amount, \$1,753.00, is based on a small entity rate of \$11/excess claim, resulting in an excess claims fee amount of \$1408.00

The Notice requires a payment of \$1,152.00 in excess claims for 128 excess claims, i.e., \$9/excess claim. The \$9/excess claim rate became effective October 1, 2000 and hence was not applicable at the time the application was filed.

4. The PTO is reminded to remove the enclosed credit card payment form from this file, after ruling on this Request, so that Counsel's credit card number is not inadvertently made public.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.
Attorneys for Applicant

By: 

Iver P. Cooper
Reg. No. 28,005

Enclosures

-Sept. 12, 2000 Credit Card Payment Form
-Sept. 12, 2000 postcard receipt
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Washington, D.C. 20001
Telephone: (202) 628-5197
Facsimile: (202) 737-3528
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